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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

	:	Case No. 1:03-CV-9004
DAVID WRIGHT, et al.,	:	
Plaintiff(s),	:	
	:	JUDGE O'MALLEY
v.	:	
	:	<u>MEMORANDUM AND ORDER</u>
CENTERPULSE	:	
ORTHOPEDICS, INC.,	:	
Defendant(s).	:	

On March 4, 2003, the plaintiffs in this case, David and Patty Wright, filed this lawsuit in Oklahoma federal court against defendant Centerpulse Orthopedics. Over a year and a half later, on November 11, 2004, the Wrights moved to dismiss their case without prejudice, pursuant to Fed. R. Civ. P. 41(a)(2) (docket no. 10). Centerpulse responded with an opposition brief, arguing that any dismissal should be *with* prejudice. *See* 9 Charles Wright & Arthur Miller, *Federal Practice and Procedure* §2367 at 318 (2nd ed. 1995) (“[I]f the plaintiff either moves for dismissal without prejudice or fails to specify whether the request is for dismissal with or without prejudice, the matter is left to the discretion of the court. The court may grant dismissal without prejudice or may require that the dismissal be with prejudice.”). Among other reasons, Centerpulse asserts that the dismissal of the Wrights’ case should be *with* prejudice because the Wrights neither propounded nor responded to any discovery during the pendency of this action, and it is clear that David Wright was not implanted with an “affected product.” Wright did not respond to

Centerpulse's opposition brief.

Although Centerpulse's position is far from frivolous, the Court chooses to **GRANT** Wrights' motion for dismissal **without prejudice**. The Court further **ORDERS**, however, that if the Wrights choose to re-file in any court any claims related to those that are now dismissed, they shall immediately notify this Court by letter, and refer to this case.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

DATED: July 19, 2005